



# Audit of The Cash Mitigation Program

Audit #98-07

Prepared by  
Office of Inspector General

**Allen Vann, Inspector General**  
**Gregory Rogers, Senior Auditor**

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## Background

In February 1998, the Regulation Department and Construction and Land Management Department requested the Office of Inspector General to review an internal policy and procedure memorandum titled “*Operational Protocol for Cash Payment as Mitigation*” (please see appendix). The departments drafted the Operational Protocol to document the process for acceptance of, and consistent accounting for, mitigation funds accepted by the South Florida Water Management District (the “District”).

As discussed in further detail below, in some circumstances the District accepts funds from Environmental Resource permit applicants in lieu of those same applicants providing mitigation for wetland impacts themselves. The funds are deposited and revenue coded for use in the acquisition, enhancement and long-term management of environmentally sensitive lands in accordance with the conditions of the issued permits.

The departments requested our Office to review the *Operational Protocol* and to make recommendations to ensure that appropriate fiscal controls for the program are in place.

## Introduction

Beginning in the late 1980s, regional mitigation was acknowledged as a method to acquire and restore large tracts of environmentally sensitive lands. This process was recognized as an improvement over small scattered individual mitigation tracts. Florida Statute 373.4135 states:

Mitigation banks and offsite regional mitigation should emphasize the restoration and enhancement of degraded ecosystems and the preservation of uplands and wetlands as intact ecosystems rather than through alteration of landscapes to create wetlands. This is best accomplished through restoration of ecological communities that were historically present.

The District’s environmental criteria require that projects proposed by permit applicants maintain the natural functions of wetlands including fish and wildlife and their habitat. When wetland impacts are unavoidable, or where habitat quality is low and the applicant proposes to impact a wetland, appropriate mitigation or compensation is required. Appropriate mitigation is determined by the relationship of the size, type, quality and function of the wetlands to be

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impacted compared to the size, type, quality and function of the mitigation proposed.

Types of mitigation proposals include:

- On-site Mitigation – enhancement or restoration of existing wetlands or creation of wetlands on the impacted property.
- Off-site Mitigation – enhancement or restoration of existing wetlands or the creation of wetlands outside of the impacted property.
- Purchase of Mitigation Bank Credits – A third party receives a permit to enhance or restore an area of wetlands and sell mitigation “credits” for the enhancement or restoration work to developers.
- Cash Mitigation – A payment is made to the District for use in a mitigation project that is brought to Governing Board for approval based upon staff recommendation. The District pools the money from multiple permittees’ payments to purchase wetland areas for preservation, enhancement or restoration and perpetual maintenance.

The process of Cash Mitigation requires participation from three District divisions:

**Regulation’s Natural Resources Management Division** is responsible for determining whether the proposed wetland impact is permissible, whether cash mitigation is a viable alternative, and whether the proposed wetland impact is offset by the cash mitigation proposal. The Division is also responsible for preparing an invoice request to the permittee for the mitigation payment, which requires receipt of payment by the District prior to initiating the permitted site work.

**Construction and Land Management’s (CLM) Land Stewardship Division** is responsible for developing the environmental enhancement or restoration plan for designated mitigation sites and for determining the full cost per acre of acquisition, enhancement or restoration and perpetual maintenance of these sites.

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The **Office of Financial Management's (OFM) Accounting and Financial Services Division** is responsible for sending the cash mitigation invoice to the permittee once the permit has been issued and forwarding receipts to the District Treasurer for credit to the Wetlands Mitigation Fund. The Division also establishes and maintains accounting records that reserve funds for land acquisition, restoration and perpetual maintenance. Additionally, the Division also calculates interest earnings on the principal balance for allocation to the expendable perpetual maintenance component.

The regulatory process for determining project eligibility for cash mitigation is as follows:

1. Evaluate whether the proposed wetland impact is avoidable.
2. Minimize the amount of wetland impact.
3. Evaluate mitigation options proposed by the applicant.
4. If on-site mitigation is not a viable option, the developer may propose off-site mitigation of their own doing or through purchase of mitigation bank credits or cash mitigation.

In areas where the District has established mitigation projects, the cash mitigation option is popular with developers and the Florida Department of Transportation for the following reasons:

- **Simplicity** – The payment of cash mitigation removes the developer's burden of determining a plan for on-site mitigation and shifts this burden to the District.
- **Expedience** - The cash mitigation process allows the developer to start their project as soon as payment is made and without the time burden of on-site mitigation, monitoring and reporting.
- **Closure** – Once the cash mitigation check has cleared, the developer's involvement with the mitigation process is complete. With on-site mitigation, future problems can include monitoring, reporting, and replacement of failed mitigation efforts.

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The District's involvement in cash mitigation began in 1992. Based upon staff recommendation, in May 1993 the Governing Board approved the concept of allowing the payment of mitigation funds towards Save Our Rivers projects as a form of mitigation for Surface Water Management permits. This type of mitigation was to include the costs of land acquisition, enhancement or restoration, and long-term management. Since that time, several amendments to Chapter 373,F.S. have been enacted regarding the role of the water management districts in providing mitigation.

Originally enacted in 1993, Florida Statute 373.413S recognizes that wetland impacts may be offset through the use of mitigation banks and offsite regional mitigation. This statute directs the water management districts to participate in and encourage the establishment of private and public mitigation banks and offsite regional mitigation.

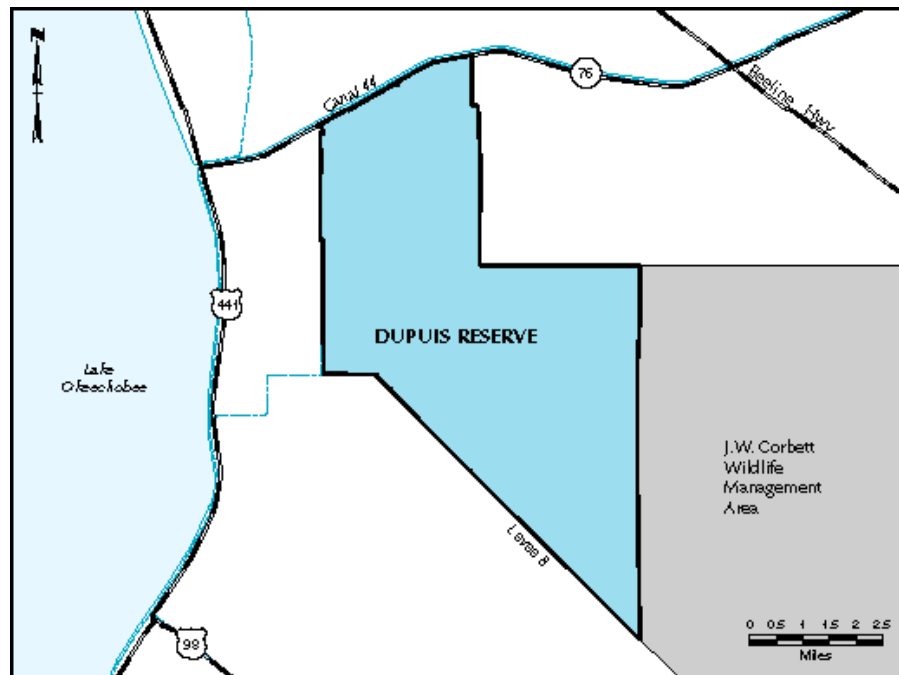
In 1996, the legislature provided further direction regarding water management district participation in mitigation through Florida Statute 373.414(1)(b)1. This statute requires the District to collect the "full cost" of acquisition, restoration, and maintenance as follows:

. . . (T)he water management district shall accept only a donation that represents the full cost to the . . . water management district of undertaking the project that is intended to mitigate the adverse impacts. The full cost shall include all direct and indirect costs, as applicable, such as those for land acquisition, land restoration or enhancement, perpetual land management, and general overhead consisting of costs such as staff time, building, and vehicles.

### **District Mitigation Projects**

As part of the adoption of the District's Save Our Rivers 1998 Plan, the use of 5 projects for regional mitigation activities were approved. Two of these approved projects are currently being used as recipient sites for mitigation funding. The Pennsuco Wetland Area (Pennsuco) of the East Coast Buffer Project serves Miami-Dade County and the Corkscrew Regional Ecosystem Watershed (CREW) serves Lee and Collier Counties. The Dupuis Reserve in Palm Beach County recorded its last transaction in 1997 and is currently unavailable for use. The two remaining projects, Shingle Creek and Upper Lakes Basin in Osceola County were previously partially funded with mitigation money, however, District staff indicates there are no current plans to continue to direct mitigation money to these projects.

In 1986, the District purchased the 21,875-acre Dupuis Reserve through the Save Our Rivers Program. Wetlands on the property had been drained for agricultural purposes and required extensive environmental restoration. Beginning in 1992, the District permitted the Dupuis Reserve to be used as a Regional Offsite Mitigation Area consisting of approximately 2,280 acres of the total site. Applicants without an onsite mitigation option could reimburse the District for the cost of land acquisition (\$2,613,990) restoration (\$1,747,696) and perpetual maintenance (\$1,565,540) at the Dupuis Mitigation Area.

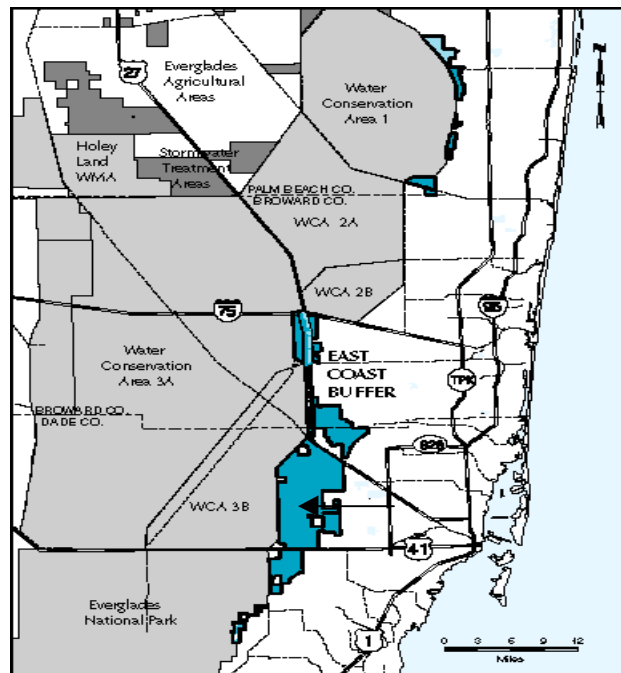


This mitigation option was limited primarily to public sector projects (schools, FDOT), linear projects (FPL), enforcement cases, and projects with small impacts and no viable on-site mitigation opportunities in Palm Beach County and Martin County. The hydrologic restoration of the L-8 marsh at Dupuis was completed in FY95 and FY96 at the cost of \$1,492,482.

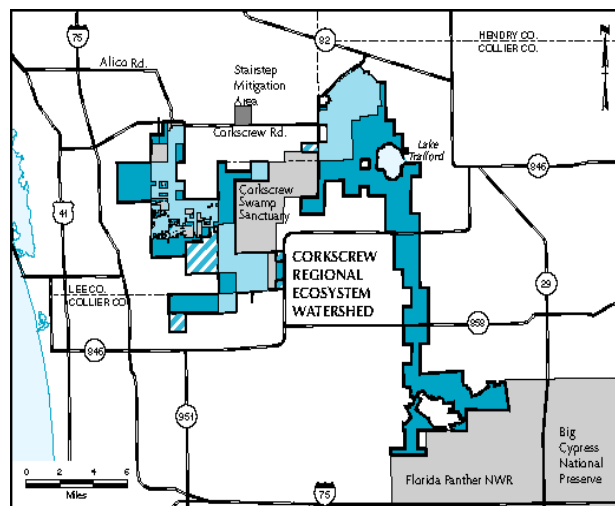
One concern raised over the use of Dupuis for mitigation was that the District was using cash mitigation funds to reimburse itself for land acquisition and restoration from other previously committed funding sources.

Currently, the District is accepting cash mitigation payments as funding for purchasing, enhancing and managing land in two areas:

The Pennsuco Regional Mitigation Area (Pennsuco) is part of the Pennsuco wetlands that are located in Dade County west of Miami and are part of the 13,000 acre Cell 26 of the East Coast Buffer. According to CLM, land acquired in Pennsuco consists of Phase One – 1,122.5 acres in the northern half, and Phase Two – 320 acres in the southern half and 560 acres at the midpoint for a total of 2,002.5 acres. All of the Pennsuco wetlands are available for incorporation into the Mitigation Area. The mitigation plan calls for land acquisition, enhancement of wetland quality through the protection of hydrologic conditions, control of exotic plants (primarily melaleuca), and the application of prescribed fire.



The Corkscrew Regional Ecosystem Watershed Mitigation Area (CREW) is located in Lee and Collier Counties, east of Fort Myers and contains a large (over 50,000 acres) nearly pristine wetland area that also serves as a recharge area for west coast well fields. Similar to Pennsuco, the mitigation plan includes land acquisition, exotic plant management and the application of prescribed fire.





The following table summarizes activity as of June 30, 1998 at the three mitigation areas:

Mitigation Area	Number of Permits	Mitigation Balance Components			Total Mitigation Payments Received
		Land Acquisition	Land Restoration	Perpetual Maintenance <sup>1</sup>	
Dupuis	15	\$1,168,392	\$ 1,250,741	\$ 820,727	\$ 3,239,860
Pennsuco	72	2,849,318	2,273,616	571,862	5,694,796
CREW	28	1,445,529	525,693	234,758	2,205,980
<b>Totals</b>	115	\$5,463,239	\$ 4,050,050	\$1,627,347	\$11,140,636

Sources: Natural Resource Management, Accounting

## Objectives, Scope and Methodology

Our office was requested to review the *Operational Protocol for Cash Payment as Mitigation* and to make recommendations to ensure that appropriate fiscal controls are in place.

Our audit encompassed a review of these fiscal controls and also an evaluation of the processes used by Regulation, CLM, and OFM to evaluate cash mitigation proposals, determine estimated mitigation cost, implement the required mitigation plan, and record cash mitigation transactions.

We obtained an understanding of the cash mitigation program by interviewing key personnel and reviewing a sample of permits that utilized cash mitigation to offset environmental impacts of the proposed land use.

We reviewed the selected permits for compliance with the Operational Protocol and Florida Statutes.

We reviewed the mitigation plans for selected mitigation areas and the methodology for determining the "Full Cost" of acquiring, restoring and perpetually maintaining mitigation parcels.

Our audit was conducted in accordance with generally accepted governmental auditing standards.

<sup>1</sup> Payments represent Non-expendable Perpetual maintenance balance. Additionally, \$769,451 of expendable interest has been earned on the acquisition, restoration and perpetual maintenance balances.

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## **Findings and Recommendations**

### **Summary**

Fiscal controls surrounding the cash mitigation process could be more effective and should be improved. We found that the majority of expenditures associated with the cash mitigation program are not being budgeted and expended through the Wetlands Mitigation fund but through the Save Our Rivers funds. We recommend that the cash mitigation and SOR land programs be separated and that all expenditures of the cash mitigation program be budgeted and expended through the Wetlands Mitigation fund. We also recommend that sub-funds be established to account for each of the major mitigation areas (acquisition, enhancement, and maintenance expenditures) and that the principal collected for perpetual maintenance be accounted for through a non-expendable trust fund.

Major components of mitigation costs that are established by the Construction and Land Management's methodology must meet the full cost accounting requirements of Florida Statute 373.414. We found that CLM may not be covering the full cost of acquiring acreage at Pennsuco and restoration cost for both Pennsuco and CREW. We recommend that cost estimates to restore lands be finalized and that the future cash donation requested from permittees be adjusted.

The amount of cash mitigation donation requested for land acquisition, enhancement, and perpetual maintenance has varied at CREW. We recommend that cash mitigation contributions be consistent until cost estimates are formally updated.

Enhancement funds have been spent to restore properties that were purchased through other funding sources instead of acquiring and enhancing the same lands with cash mitigation funding. Cash mitigation funds collected for enhancement should not be used to supplant other restoration funding, the District should use cash mitigation funds to acquire, restore and maintain lands in that sequence. We otherwise found permits issued using cash mitigation meet eligibility requirements. However, we recommend that staff permit reports clearly identify both the amount of cash mitigation payments required and the allocation between acquisition, restoration, and perpetual maintenance. The amount of acreage that will be purchased should also be clearly indicated. Details of our findings and recommendations follow.

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## **Accounting for Revenues and Expenditures Could Be Refined**

Currently, all revenue from the cash mitigation program is accounted for in the Wetlands Mitigation Fund. This special revenue fund was established for the exclusive use of mitigation funds set aside to acquire, restore, and manage wetlands. These funds are legally reserved in accordance with the District's regulatory permit conditions. However, the vast majority of expenditures funded by cash mitigation are expended through the Save Our Rivers (SOR) funds. The SOR special revenue fund was established to account for funds received from the Water Management Lands Trust Fund (WMLTF) used to manage and restore environmentally sensitive water resource lands. The SOR capital projects fund was established to account for funds received from the WMLTF and the Florida Preservation 2000 Trust Fund. Budget transfers are used to reimburse expenditures made from the SOR funds for Cash Mitigation fund expenditures.

The funds collected through the cash mitigation program are held as reserved fund balances. The principal balances for the land acquisition and restoration components are available for immediate expenditure. The principal balance of the perpetual maintenance component is not available for expenditure but is used to fund maintenance through interest earnings. The District has established a policy that all interest earnings from the three components are credited to the long-term maintenance component and this interest is currently available for maintenance expenditure. Thus, the perpetual maintenance principal balance is analogous to a non-expendable trust fund.

Currently, all District land acquisition and restoration costs are recorded in the SOR program. Periodically, CLM staff determines which expenditures were for the cash mitigation program, and requests a budget transfer from the Wetlands Mitigation Fund to reimburse the SOR fund for these expenses.

A contributing factor to this method of expending cash mitigation funds is the budgeting of cash mitigation expenditures in the SOR funds as opposed to budgeting expenditures directly in the Wetlands Mitigation fund. After budgeting for these expenditures, staff and contractual costs should be coded directly into the Wetlands Mitigation fund.

The use of multiple transactions to expend mitigation funds increases the administrative expense of the program and bears the risk of using SOR management funds to fund cash mitigation work and visa versa. The process of reimbursing the SOR fund for expenditures can present the impression that

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the District is using cash mitigation to supplant other funding sources as opposed to having an on-going program of actively identifying parcels of land to be purchased, restored and managed with cash mitigation funds.

The Wetlands Mitigation fund should be operated as a self-balancing account, recording cash and investment income together with all related expenditures directly in the fund, thus assuring that the specific activities are being performed in accordance with Florida Statute 373.414. Additionally, segregating both revenue and related expenses of the cash mitigation program in a separate fund would avoid problems similar to that experienced with Dupuis.

Accounting for the activities of the Wetlands Mitigation fund could be further refined if the separate cash mitigation areas were accounted for in sub-funds and the perpetual maintenance component was accounted for in a non-expendable trust fund.

## **Recommendations**

- 1. Refine the accounting for mitigation expenditures by budgeting and expending moneys through the mitigation fund.**

### **Management Response:**

Management agrees and plans to budget and expend mitigation moneys through the Wetlands Mitigation Fund effective for FY 1999. However, circumstances may exist (e.g. Dupuis Mitigation Area annual maintenance representing approximately 10% of total Dupuis maintenance) where it is more efficient to expend total maintenance from other funds and transfer the appropriate percentage for the mitigation area to that fund as a reimbursement.

### **Auditors' Comment:**

These instances should be kept to a minimum to retain the integrity of the accounting for the separate programs. Additionally, proper documentation should be maintained for any transfers.

**Responsible Division:** Office of Financial Management  
**Estimated Completion Date:** October 1, 1998

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**2. Separate the cash mitigation and SOR land purchasing, restoration, and maintenance programs.**

**Management Response:**

Beginning in FY99, the Construction and Land Management Department will institute measures to segregate the acquisition, restoration, and management of lands between the Cash Mitigation Program and the Save Our Rivers Program. To this end, the Department has separately identified and budgeted, within the Wetlands Mitigation Fund (Fund 211), approximately \$3.1 million in expenditures for acquisition, restoration, and management of lands, utilizing revenue to be received through cash mitigation. This methodology should avoid the historical practice of running the cash mitigation program 'through' the SOR program, thereby eliminating the necessity for after-the-fact budget amendments and transfers.

Finally, in Pennsuco, because of the critical need to keep the Water Preserve Area acquisitions moving, the District may, with specific Governing Board approval, continue to advance funds for acquisition when mitigation monies are insufficient for timely purchase of a critical parcel of land. Such advances will be repaid within six months.

**Responsible Department:** Construction and Land Management

**Estimated Completion Date:** Fiscal Year 1999

**3. Account for the transactions of the separate cash mitigation areas through sub-funds of the Wetlands Mitigation fund.**

**Management Response:**

Sub-fund accounting within the District's financial accounting system is limited to creating separate funds for each project area and each component of the cash mitigation payment. Currently, this would result in 24 separate funds. For logistical and efficiency reasons, the Management does not agree that sub-funds in the financial accounting system are appropriate. Instead, Management will continue to use electronic work papers to segregate the balances for each project area and each component of the cash mitigation payment.

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**Auditors' Comment:**

Use of electronic spreadsheets for record keeping purposes does not result in the same level of accounting control as maintaining records of transactions in the District's financial accounting system. Electronic worksheets can easily be changed without the same level of control as the official District accounting records. Maintaining separate records can also be resource intensive. Should cash mitigation activities continue to increase, the use of electronic work papers will become burdensome. We reaffirm our recommendation.

**Responsible Division:** Office of Financial Management

**Estimated Completion Date:** October 1, 1998

4. **Account for the perpetual maintenance component of cash mitigation through a non-expendable trust fund.**

**Management Response:**

Management concurs with the recommendation. A non-expendable trust will be created at year-end by recording a residual equity transfer.

**Responsible Department:** Office of Financial Management

**Estimated Completion Date:** November 1, 1998.

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## **Estimation of Restoration Costs Should Be Completed and Should be Fully Funded**

Florida Statutes 373.414 requires the District to develop full cost accounting for any donation of mitigation moneys. This requirement helps place private mitigation banks on an even playing field with the District. CLM is in the process of developing cost estimates and capturing labor related costs through the time reporting system. Once completed, biennially, estimated costs will be compared to actual costs and estimated costs adjusted.

In order to fulfill the full cost accounting requirement, CLM must estimate all costs associated with land acquisition, restoration, and perpetual maintenance.

CLM has developed the following methodology for these costs:

### Land Acquisition

- Actual or appraised cost per acre plus associated contractual costs such as title and appraisal.
- Staff and administrative costs including appraisal review, survey, negotiations, counsel review, and risk assessment.
- Indirect overhead at 128% of staff costs and management overhead at 10% of acquisition and restoration costs.

Using the average price per acre for properties in Pennsuco and CREW closed in FY98 and CLM's full cost methodology, we estimated the current full cost to acquire land in the CREW and Pennsuco mitigation areas and compared the estimate to what CLM is currently requesting for land acquisition as follows:

Per Acre Cost		
Mitigation Area	CREW	Pennsuco
Full Acquisition Cost Per Audit	\$1,602	\$3,173
Current Mitigation Acquisition Cost Per CLM	3,153	3,071
Indicated Overage/Shortage	\$1,551	\$ (102)

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CLM is collecting sufficient funds for full cost land acquisition at CREW may be slightly underfunding land acquisition at Pennsuco.

### Restoration

CLM estimates the full cost of restoration using the following factors:

- Contractual Costs
- Contract monitoring (7 ½% of contract price)
- Overhead (128% of total restoration costs)

The District is currently charging \$2,457 per acre for cash mitigation enhancement at Pennsuco. The *Status Report on the Use of Mitigation Funds in CREW and Pennsuco Projects*<sup>2</sup> estimates the restoration cost per acre for Pennsuco at \$3,781 per acre. Due to a lack of restoration history, CLM has not finalized their estimate of restoration costs at CREW.

By not having a complete estimate of restoration costs at CREW and not requesting funding of the current estimate at Pennsuco, the District is potentially under funding the restoration. As a result, any shortfall would be funded by SOR maintenance funds.

### Perpetual Maintenance

CLM estimates perpetual maintenance cost as \$18.50 per acre per year. To fund this annual amount, a \$495 per acre cash mitigation payment is required from the permittee. Using assumptions of a 5% rate of return and a 3% inflation rate the principal will fund the estimated maintenance cost and retain the original principal balance through twenty years. We reviewed these assumptions and found them to be reasonable based upon the following:

- CLM's land stewardship \$11.40<sup>3</sup> cost per actively managed acre for the past four years.
- The average Consumer Price Index of 3.4%<sup>4</sup> for the past ten years.
- The average investment return earned by the District of 5.36%<sup>5</sup> over the past seven years.

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<sup>2</sup> Prepared by the Land Stewardship Division.

<sup>3</sup> Source – District FY98 Budget Book

<sup>4</sup> Source – USDA Consumer Price Index Website

<sup>5</sup> Source – District FY97 Comprehensive Annual Financial Report



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CLM has consistently collected at least the required \$495 for perpetual maintenance from permittees.

## **Recommendations**

- 5. The cash mitigation donation for Pennsuco should be increased to, at a minimum, fund the anticipated restoration costs at Pennsuco.**

### **Management Response:**

Management concurs with the concept of the recommendation, but does not concur with the specific recommendation being made, and is of the opinion that the cash mitigation donations being received for Pennsuco are sufficient to fund the restoration costs, as well as the acquisition costs.

Although not in the form of a finding/ recommendation, the audit report, on page 15, indicates that land acquisition at Pennsuco is being underfunded from cash mitigation amounts being charged permittees. It should be understood that the amounts used to calculate the "Full Acquisition Cost Per Audit" were based on the average cost of actual land purchases during the period from October, 1997, through June, 1998, and are not necessarily indicative of the price of lands being acquired with cash mitigation funds. Specifically, the subject full acquisition costs noted in the report for CREW and Pennsuco included average per acre purchase prices of \$1,362 and \$2,856, respectively. The actual average per acre purchase prices of lands that have been identified for cash mitigation funding, as detailed in the Status Report of the Use of Mitigation Funds, January 1, 1998 – June 30, 1998, amount to \$1,474 and \$2,204 per acre for CREW and Pennsuco, respectively, which, when added to associated costs of acquisition and compared to the current mitigation cost being charged permittees, reflects that sufficient funds for land acquisition are being collected through cash mitigation permits.

The audit recommendation itself spoke specifically to the restoration costs at Pennsuco, indicating that insufficient funds were being collected to offset actual restoration costs. As noted in the audit report, the restoration costs as set forth in the Semi-annual Status Report through December 31, 1997, were estimated at \$3,781 per acre. This figure included a contingency that would provide for a repeat treatment of exotic control the second year if conditions were such that seedlings regenerated and proliferated. The Pennsuco exotic removal/ restoration treatment is currently underway in the 1,122.5 acre Phase One area. The recently

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issued Semi-annual Status Report through June 30, 1998, states that approximately 520 acres, or 46% of the Phase One area has been treated at a cost of \$200,000 or \$388 per acre (excluding applied monitoring and overhead). This actual cost is significantly less than the \$3,781 estimate, and the per acre restoration amount that the District is currently taking in from cash mitigation permits. It is expected that by the time of the Semi-annual Status Report through June 30, 1999, CLM can more accurately represent the necessary costs to treat one acre in Pennsuco. By then, the entire treatment including a prescribed burn will be complete and weather conditions over time will have brought about the seedling surge, if it is to occur.

**Auditors' Comment:**

The Management's response indicates that a firm estimate of the cost to restore lands at Pennsuco will not be finalized until June 30, 1999. The \$388 per acre cost for restoration noted in the Semi-annual Status Report through June 30, 1998 does not include applied monitoring and overhead and does not represent the "full cost" of restoration. Once management has completed their estimate of the full cost to restore Pennsuco acreage, we recommend that the payment collected be updated to cover the revised restoration costs.

**Responsible Department:** Construction and Land Management  
**Estimated Completion Date:** June 30, 1999

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6. **Complete an estimate of the cost per acre to restore land at CREW and then update “full cost” cash mitigation payment requirements as needed.**

**Management Response:**

Management concurs with the recommendation. The restoration costs for CREW cannot be estimated until the acquisition plan is complete. Presently, CLM is preparing a restoration cost estimate to support the plan to acquire 640 acres for \$943,040. The acquisition plan to support the FY99 budget amount of \$825,00 in CREW is expected to occur by the end of August, 1998. It is expected that by submittal of the December 31, 1998 Semi-annual Status Report, the restoration costs, reflective of the acquisition plan, will be complete. For FY99, an amount of \$100,000 is budgeted for exotic removal in CREW. The comparison between the estimated costs and actual costs can be determined by the end of the fiscal year. At that time, it would be appropriate to revise the restoration costs, if necessary.

**Responsible Department:** Construction and Land Management  
**Estimated Completion Date:** December 31, 1998

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## Mitigation Charges Should be Consistent for a Stated Period

The amounts charged permittees per acre at CREW and Pennsuco for acquisition, restoration and perpetual maintenance has varied as follows:

**CREW** – Our Office reviewed eighteen payments, with permit dates from December 9, 1996 to March 16, 1998, for consistency of cash mitigation payments. The per acre payment range was as follows:

Payment Type	Per Acre Payment	
	High <sup>6</sup>	Low
Acquisition	\$ 22,667	\$ 2,583
Restoration	3,031	1,347
Maintenance	2,694	495

Source: Natural Resource Management Division

**Pennsuco** - Mitigation costs at Pennsuco have been consistent. Initially set at a total cost of \$5,000 per acre, the costs have been revised to \$6,142 per acre to reflect an increase in costs incurred.

Payment Type	Per Acre Payment	
	Current	Original
Acquisition	\$ 3,071	\$ 2,500
Restoration	2,457	2,000
Maintenance	614	500

Source: Natural Resource Management Division

The amount charged for cash mitigation at Pennsuco have been consistent for a stated period of time until cost estimates were formally updated.

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<sup>6</sup> It should be noted that if one payment for acquisition, restoration and perpetual maintenance of \$22,667, \$3,031 and \$2,964 respectively is set aside, the next highest payments were \$5,048 for acquisition, \$1,681 for restoration and \$1,347 for perpetual maintenance.

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**Recommendation:**

- 7. Per acre cash mitigation payments for land acquisition, enhancement, and perpetual maintenance at each mitigation area should be consistent for a stated period of time until cost estimates are formally updated.**

**Management Response:**

We concur with this recommendation. Cost estimates for Pennsuco have been set for some time at \$6,142 per acre. This number will remain constant until formally updated. Cost estimates for CREW are determined based on a complex formula. This formula will be replaced with a single, fixed number by October 1, 1998.

**Responsible Department:** Regulation  
**Estimated Completion Date:** October 1, 1998

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### **Land Acquisition Funds Should Be Expended Prior to Enhancement And Perpetual Maintenance Funds**

Since the inception of the Cash Mitigation Program, it would appear that cash mitigation funds have been spent for land acquisition, enhancement and perpetual maintenance through June 30, 1998, as follows:

<b>Mitigation Area</b>	<b>Land Acquisition</b>	<b>Enhancement</b>	<b>Expendable Perpetual Maintenance</b>
<b>Dupuis</b>	\$ 0	\$ 1,213,428	\$ 38,286
<b>Pennsuco</b>	1,550,000	0	0
<b>CREW</b>	0	119,388	45,561
<b>Totals</b>	\$1,550,000	\$ 1,332,816	\$ 83,847

**Source: Accounting / Natural Resource Management Division**

Enhancement funds and expendable maintenance funds were spent prior to land acquisition funds at Dupuis. Enhancement funds are being spent prior to land acquisition funds at CREW.

In order to comply with permit requirements, land must be acquired, enhanced and perpetually maintained with cash mitigation funds.

Without the acquisition of acres through the cash mitigation program, there is the expectation that cash mitigation enhancement and expendable maintenance funds would also not be used. However, because the CLM has purchased land in these mitigation areas through other funding sources, there is an existing inventory of land that needs enhancement and maintenance. These lands should normally be restored with SOR funding not with cash mitigation funding.

Additionally, the use of cash mitigation enhancement and expendable maintenance funding prior to cash mitigation acquisition funding can lead to the perception that cash mitigation funds are used to supplant other enhancement and maintenance funding. Furthermore, the District bears the risk of not having sufficient cash mitigation enhancement and expendable maintenance funds for subsequent acreage purchased through the cash mitigation program.

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## Recommendation

8. Cash mitigation acquisition funds should be used to purchase acreage prior to using funds for enhancement and perpetual maintenance in accordance with permit requirements.

### Management Response:

Management concurs with the recommendation. In accordance with the Operational Protocol for cash Payment as Mitigation Memorandum (NRM-01-97), land acquisition expenditures will precede those for restoration and management of lands.

**Responsible Department:** Construction and Land Management  
**Estimated Completion Date:** October 1, 1998

9. The use of cash mitigation enhancement funds for acreage acquired through other funding sources should be ~~discontinued~~ limited subject to Governing Board approval.

### Management Response:

We concur with the intent of this recommendation. However, there may be circumstances when mitigation money is appropriately intended for use on lands purchased through other funding sources. For example, a permittee may donate to the District a large tract of land they already own in CREW or Pennsuco and provide the District with money to maintain that tract of land. Or, the District may allow a permittee to pay for the restoration of the C-18 canal bank already under District ownership. Such mitigation proposals, assuming compliance with all applicable regulatory criteria, are permissible under current District rules. We recommend that such cash mitigation proposals be brought before the Governing Board for review and approval of each circumstance.

### Auditors' Comment:

Based upon management's response we modified the recommendation in our draft report as noted by the above additions/deletion.

**Responsible Department:** Construction and Land Management  
**Estimated Completion Date:** Immediate

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## **Mitigation Requirements Could Be More Clearly Defined**

Our testing disclosed that Cash Mitigation permits are in compliance with eligibility requirements. However, in two cases, the amount of mitigation acreage required and the resultant mitigation payment components could have been more clearly identified.

It is necessary to clearly indicate the cash mitigation payment components and amount of acreage that will be restored in order to identify how the mitigation activities will offset proposed impacts. If this information is not clearly identified, it can be difficult to determine if the mitigation requirements have been satisfied.

One permit file denoted the amount of mitigation acreage required and the total price of the off-site mitigation, but it did not provide a breakdown between acquisition, enhancement and perpetual maintenance cost.

The second permit file contained the total amount of the mitigation payment and the expected cost per acre for acquisition, enhancement and perpetual maintenance; however, the permit file did not specify the amount of acreage that would be purchased and restored. Although it is possible to calculate the amount of acreage and the amount of dollars for each activity, it should be specifically stated in the permit review and the permit special conditions.

### **Recommendation**

- 10. Staff permit reports should clearly identify the amount of cash mitigation payment required, the breakout between acquisition, enhancement, and perpetual maintenance and the amount of acreage that will be purchased.**

#### **Management Response:**

We concur with this recommendation.

<b>Responsible Department:</b>	Regulation
<b>Estimated Completion Date:</b>	Immediately



# Memo

**South Florida Water  
Management District**

**TO:** Allen Vann, Inspector General

**FROM:** Terrie Bates, Director, Regulation Department  
Bill Malone, Director, Construction & Land Management Department

**DATE:** February 25, 1998

**SUBJECT:** Review of Operational Protocol for Cash Payment as Mitigation

This memo is written to request your review of an internal policy and procedure memo. The attached memo titled "Operational Protocol for Cash Payment as Mitigation (NRM-01-97)" was written to provide clear direction regarding the acceptance of and consistent accounting for mitigation funds accepted by the South Florida Water Management District (District).

The District accepts these funds from Environmental Resource Permit applicants in lieu of those same applicants providing mitigation for wetland impacts themselves. The funds are deposited and revenue coded for use in the acquisition, enhancement and long-term management of environmentally sensitive lands in accordance with the conditions of the issued permits.

Our goal in developing the Operational Protocol is to ensure that appropriate fiscal controls are in place to govern the acceptance, accounting and use of cash mitigation funds. We would appreciate your review of the Operational Protocol and would welcome recommendations or feedback from the Inspector General's office.

If you require additional information regarding this process, please contact Robert Robbins, Director of the Natural Resource Management Division, at extension 6951.

TB/rr

Attachment

Distribution:

Sam Poole  
Mike Slayton  
Jim Yager  
Ken Ammon  
Tony Waterhouse  
John Fumero  
Anita Bain  
Bob Brown  
Karen Johnson  
Marc Ady

# Memo

**South Florida Water  
Management District**

**TO:** Regulation Department; Natural Resource Management Division Staff  
Construction & Land Management Department; Land Stewardship Division Staff  
Management Services Department; Accounting Division Staff

**FROM:** Terrie Bates, Director, Regulation Department  
Bill Malone, Director, Construction & Land Management  
Jim Yager, Director, Management Services Department

**DATE:** January 26, 1998

**SUBJECT:** Operational Protocol for Cash Payment as Mitigation (NRM-01 -97)

## **Background & Purpose:**

In May 1993, the Regulation Department presented the Governing Board with an implementation program designed to allow the donation of cash towards District Save Our Rivers projects as a form of mitigation for Surface Water Management permits. The program included costs of land acquisition, enhancement or restoration, and long term management. Determination of the appropriateness of this form of mitigation was made on a permit-by-permit basis.

Subsequently, Section 4.3.1.8 of the Basis of Review for Environmental Resource Permit Applications within the SFWMD, August 1985 (BOR) was adopted, which provides for the donation of money as a viable mitigation option. The rule states that cash payments must be specified for use in a "District or Department of Environmental Protection endorsed ... project...". The project must offset the proposed wetland impacts.

During the 1996 legislative session, HB 2241 modified Section 373.414, F.S., to require "full cost accounting" for any donation of cash as a form of mitigation to a water management district or the Department.

More recently, HB 1073 of the 1997 legislative session imposed additional constraints on cash payment as mitigation. This includes public noticing of fully permitted mitigation plans and bi-annual reporting to the Governor's office. Directions to carry forth these new requirements are discussed in the appropriate sections in this memo.

The purpose of this memo is to provide comprehensive, step-by-step direction in utilizing cash donations as mitigation as described in statute and rule and consistent with previous Governing Board direction.

**Operational Protocol:**

In summary, mitigation payment may only be received for a mitigation project whose environmental benefit can be quantified now and whose costs can be estimated now. A specific mitigation project may be used to offset a given wetland impact only after a site specific analysis determines that the project will offset the impact in accordance with section 4.3 of the BOR. The amount of money received must be sufficient to offset wetland impacts in accordance with full-cost-accounting practices.

Every dollar required by or received as a result of a special condition of a District permit shall be tracked and accounted for. Monies received may only be spent in accordance with the conditions of the District permit that generated the money.

Following are the specific procedures to be followed by each Division/Department responsible for implementing cash mitigation.

**Natural Resource Management Division:**

From a rule perspective, cash mitigation shall be implemented similar to other off-site mitigation. Just as is required for any other type of mitigation, it is important to demonstrate that the proposed impact is indeed offset by the proposed mitigation.

Cash mitigation does not supercede the "elimination or reduction of impacts" provision of Section 4.2.1 of the BOR. At the same time, applicants proposing impacts to very low quality wetlands may continue to rely on the exception to reduce or eliminate impacts in accordance with Section 4.2.1.2 of the BOR.

Once the decision is made that off-site mitigation is a viable consideration, cash payment is only one option available to the applicant. Other mitigation options are not diminished. Any mitigation, be it the applicant's own mitigation plan, purchase of credits from a mitigation bank or cash payment, is available to the applicant provided the mitigation offsets the impact in accordance with Section 4.3 of the BOR. It is up to the applicant to decide which type of mitigation to propose.

It is necessary to know the full extent of what mitigation activities will be accomplished with the cash payment. This information must be provided by the entity developing the plan. Only once these activities are known can NRM staff make a determination as to whether or not the mitigation activities will offset proposed impacts.

Staff must be vigilant in countering potential perceptions that the District is in the business of selling wetlands for profit or soliciting cash payments to fund District projects. To this end, staff reports proposing cash mitigation are expected to have extensive justification as to how the work enabled by the cash payment will offset the proposed impact. This justification will divide the cash payment into three monetary sums (acquisition, enhancement or restoration and long-term management) and will discuss how each of these sums will contribute to offsetting the impact. Staff and administrative costs necessary for each of these three categories will be considered as part of each category cost.

## **Appendix - Audit Request and Operational Protocol**

As part of the internal process for finalizing staff recommendations, each staff report that recommends cash mitigation will also provide evidence that the project, if approved, is already captured in the District's accounting tracking system. Each staff report will be accompanied by a completed 'Request for Invoice' form (copy attached). This form will cause the Accounting Division to send an invoice to the permittee if the project is approved. By sending an invoice, we are assured that the expected payment is captured in the Accounting Division's tracking system. The staff report will inform the permittee that the invoice is forthcoming, will require the permittee to pay the invoice within thirty days of receipt (or as otherwise specified in the staff report) and will require the District's receipt of payment prior to initiating the permitted site work.

In addition to a 'Request for Invoice' form, the staff report will also contain an updated NRM spreadsheet with the proposed project identified. This spreadsheet will be used by NRM compliance staff to verify that payment has been received prior to initiation of site work. The NRM spreadsheet will be reconciled with Accounting Division's fund receipts on a quarterly basis. Permitted projects who have remitted the appropriate mitigation fee will be noted as being in compliance with respect to permitted mitigation requirements. Permitted projects found to be late in remitting their mitigation fee will be issued a first notice of noncompliance. Once brought under the review of post permit compliance staff, any such project will be dealt with as any other project late in initiating mitigation.

In addition to monthly reconciliation of issued permits, NRM and CLMD staff will reconcile number of acres of land acquired and restored or enhanced on a semi-annual basis. This reconciliation is intended to demonstrate that the amount of mitigation funds taken in is, in actuality, acquiring and restoring or enhancing at least the number of acres required by the issued permits.

Accounting Division staff (currently Frank Mumby) are to be copied on each staff report recommending cash payment as mitigation.

In January and July of each year, NRM Division will prepare a report to the Governors Office summarizing the cash payment activities to date.

### **Accounting Division:**

The 'request for invoice' is held by the NRM division director until the individual permit is approved by the Board or until staff issues a general permit. Appropriate accounting division staff (Frank Mumby) is copied on the permit. Immediately after permit issuance, the 'request for invoice' is sent to accounting. Accounting staff will then send an invoice to the permittee.

When cash is received as a result of a Request for Invoice from Regulation, the cash is deposited by the District Treasurer in the pooled cash depository account. The appropriate revenue codes are provided to the Treasurer by Accounting for credit to the Wetlands Mitigation Fund (Fund 211).

Monthly, cash receipts are reviewed and journal entries are prepared to reserve funds for land acquisition, enhancement or restoration and long-term maintenance. The information necessary to record the reservations is contained in the special conditions of the permit staff report provided to Accounting by Regulation.

## **Appendix - Audit Request and Operational Protocol**

The amounts available by project, permittee and purpose are maintained on an electronic spreadsheet so that interest earnings can be calculated and allocated to each project. All interest earnings from the land acquisition, enhancement or restoration and long-term maintenance components of the Wetlands Mitigation Fund are applied to the long-term maintenance component. The spreadsheet is reconciled to the general ledger each month. The spreadsheet is also reconciled with Regulation's spreadsheet quarterly.

The principal balance of the long-term maintenance component is not available for expenditure. Only the interest earned from Wetland Mitigation Fund Code 211 is available to fund long-term maintenance requirements.

### **Construction and Land Management Department:**

Section 4.3.1.8 of the Basis of Review recognizes the existence of District-endorsed environmental restoration projects. Generally, it is the responsibility of the Land Stewardship Division of the Construction and Land Management Department to develop such environmental enhancement or restoration projects. Pursuant to Chapter 373.414, F.S. the development of such plans shall also include an analysis of the full cost of implementing the environmental restoration plan. The full cost of any plan is divided into four primary categories; acquisition of property and associated costs, staff and administrative costs, enhancement or restoration of the property and associated costs, and the cost of long-term management/maintenance of the restored property.

**Acquisition and Associated Costs:** This is the cost or estimated cost of the property to be acquired. It will be the actual cost of the property, if already acquired, or the estimated cost based upon appraisals of the property to be restored or similar property in the general vicinity. The associated costs include cost of surveys, title searches and insurance, appraisal, and environmental audits.

**Staff and Administrative Costs:** These costs include staff review of the appraisal, survey/drafting, environmental audit, and title and negotiation for the acquisition of the land. It also includes amounts for indirect overhead and a management overhead.

**Enhancement or Restoration and Associated Costs:** Enhancement or restoration may include hydrologic restoration (ditch plugging, impoundment construction, etc.); upland restoration; treatment of heavy infestations of exotic vegetation; fire-line construction; and initial brush control or prescribed burning efforts. The enhancement or restoration activity will consider natural features of the property such as site hydrology, topographic elevation and soil characteristics to accomplish successful enhancement or restoration. Associated costs include contract monitoring and indirect overhead. The cost of obtaining any necessary permits within the context of Part IV of Chapter 373, F.S., as required by SB 1073, is considered associated costs of enhancement or restoration. Generally, activities such as hydrologic restoration will require a permit under Chapter 373, F.S. Enhancement activities such as eradication of exotic species generally will not require a permit.

**Perpetual Management/Maintenance:** The perpetual management/maintenance cost is equal to the amount of money, considering investment return and inflation costs, necessary to generate sufficient annual interest to pay for the anticipated annual maintenance of an enhanced or restored parcel of land.

## **Appendix - Audit Request and Operational Protocol**

**Full Cost Accounting:** Full cost-accounting practices will be applied in establishing the cost of acquisition, staff and administrative, restoration and long-term management and maintenance. These estimated costs will be updated every two years.

**Development of Mitigation Plans:** A mitigation plan will be developed for each project that may be eligible for mitigation funds. These plans will explain the function required, i.e. hydrologic restoration/enhancement, exotic control, etc. These plans will become the basis for estimating the total mitigation costs required. For projects already funded, a mitigation plan will be developed or updated reflecting the enhancement or restoration required prior to the expenditure of mitigation funds. A mitigation plan for other projects will be developed in advance of the receipt of such funds. Such projects that may be eligible to receive mitigation funds will be approved by the Governing Board and duly noticed annually in the Save Our Rivers Five-Year Plan update.

**Budgeting of Mitigation Funds:** The Land Stewardship Division will be responsible for the budgeting of the interest accrued on the funds collected for long-term management/maintenance and restoration and associated costs. The Real Estate Division will be responsible for the budgeting of funds for land acquisition and associated costs. Funds collected for Staff and Administrative Costs will be budgeted by the Real Estate Division. Interest accrued in the Wetland Mitigation Fund may be used for management of additional lands within the approved Save Our Rivers mitigation project and budgeted as appropriate by the Real Estate or Land Stewardship Division.

**Compliance with Permit Conditions:** A report will be provided semi-annually to the Regulation Department providing the status of each mitigation project. The report will provide a summary of expenditures, number of acres of land acquired and number of acres of land restored or enhanced. Regulation staff will compare this report to the number of acres required to be acquired and restored or enhanced in the issued permits. Regulation staff will keep a running tally as to which issued permits have had their mitigation requirement satisfied.

### **Other Government Entities:**

On occasion, other government entities, including DEP, ACOE and local governments, may also direct applicants to remit cash to a District-sponsored mitigation fund. If Regulation also requires a permit for this activity, we will follow the process described above. However, if Regulation has not or will not be issuing a permit requiring the mitigation payment, the other government entity must provide the information typically provided by Regulation. This includes providing a copy of the agents permit or license to Accounting and Regulation staff and providing a completed Request for Invoice form to Accounting. Since a District permit will not be issued authorizing District staff to receive these particular funds, a separate Governing Board item will be prepared to request Board authorization to accept mitigation funds as a result of another agency's permit. Regulation staff will prepare the agenda item for the Governing Board.

If a check is received by Accounting as a result of another agency issued permit that is not reflected on Accounting and Regulation tracking spreadsheets, the check shall be immediately returned to sender. A copy of the cover letter returning the check will be provided to Regulation and to the other government entity.

**Auditing Procedures:**

The Inspector Generals office will be asked to review the Operation Protocol and make recommendations to ensure that appropriate fiscal controls are in place.